

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GEORGE HASSETT,	§
	§ No. 601, 2010
Defendant Below-	§
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr. ID 0310024025
Plaintiff Below-	§
Appellee.	§
	§

Submitted: December 17, 2010

Decided: February 8, 2011

Before **HOLLAND, BERGER**, and **JACOBS**, Justices.

ORDER

This 8th day of February 2011, upon consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) The appellant, George Hassett, filed this appeal from the Superior Court's denial of his motion for correction of sentence. Hassett argued that the retroactive application of a new law requiring him, as a convicted sex offender, to wear a GPS monitoring bracelet upon his release from incarceration is unconstitutional. We find no merit to Hassett's argument on appeal. Accordingly, we affirm the Superior Court's judgment.

(2) The record reflects that, on March 19, 2004, Hassett pled no contest to four counts of third degree rape. The Superior Court immediately sentenced him to a total period of forty years at Level V incarceration, to be suspended after serving an eight-year mandatory prison term for a twelve-year period of probation. Hassett was placed on conditional release on September 3, 2010.¹ Hassett will remain on conditional release, under the supervision of the Board of Parole, until he begins his Level III probation on October 24, 2011. Shortly before he was placed on conditional release, Hassett filed a motion for correction of an illegal sentence in the Superior Court. The Superior Court denied that motion. This appeal followed.

(3) In his opening brief on appeal, Hassett asserts that his original 2004 sentence did not require him to wear a GPS monitoring bracelet upon his release from incarceration. He, therefore, argues that applying a 2007 statutory enactment requiring him to wear a GPS monitoring bracelet² violates the ex post facto clause of the United States Constitution and renders his sentence illegal.³

¹ DEL. CODE ANN. tit. 11, § 4302(5) (2007) (conditional release is “the release of an offender from incarceration to the community by reason of diminution of the period of confinement through merit and good behavior credits); DEL. CODE ANN. tit. 11, § 4348 (2007) (conditional release is a period of parole served by a defendant upon achieving an early release from prison after receiving time off for merit and good behavior credits and continuing until the expiration of the maximum term of imprisonment to which the defendant was sentenced).

² See DEL. CODE ANN. tit. 11, § 4121(u) (2007). This statute, which became effective July 12, 2007, provides that, “Notwithstanding any provision of this section or title to the contrary, any Tier III sex offender being monitored at Level IV, III, II or I, shall as a condition of their probation, wear a GPS locator ankle bracelet paid for by the probationer.”

³ The ex post facto prohibition of article I, §§ 9-10 of the United States Constitution precludes Congress or any State from enacting a law that “imposes a punishment for an act which was not punishable at the time it was committed; or imposed additional punishment to that then prescribed.” *Distefano v. Watson*, 566 A.2d 1, 5 (Del. 1989) (quoting *Weaver v. Graham*, 450 U.S. 24, 28 (1981)).

(4) This Court previously has held that the sex offender registration and community notification requirements of 11 Del. C. §§ 4120 and 4121 are not punitive in nature and, thus, the retroactive application of those requirements does not implicate the ex post facto clause.⁴ Similarly, we conclude that the retroactive application of Section 4121(u) requiring registered Tier III sex offenders to wear GPS monitoring bracelets while on supervision at Levels IV-I does not implicate the ex post facto clause because the statute is intended for public safety and is not punitive in nature.⁵ Accordingly, we find no merit to Hassett's arguments on appeal.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

⁴ See *Smith v. State*, 919 A.2d 539 (Del. 2006); *Helman v. State*, 784 A.2d 1058 (Del. 2001).

⁵ *Id.*